IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 22.01.2007

Coram:-

The Hon'ble Mr. Justice P.K.MISRA
and
The Hon'ble Mr. Justice K.MOHANRAM

Habeas Corpus Petition No.1095 of 2006

Rajini ... Petitioner

vs.

1. The Secretary to Government,
   Prohibition and Excise Dept.,
   Secretariat, Chennai-600 009.

2. The Commissioner of Police,
   Greater Chennai.

... Respondents

Petition under Article 226 of the Constitution of India for the issuance of a Writ of Habeas Corpus to call for the records in connection with the order of detention passed by the second respondent dated 03.07.2006 in Memo No.169/BDFGISV/2006, against the petitioner Rajini, son of Basker, aged about 23 years, who is confined at Central Prison, Chennai and set aside the same and direct the respondents to produce the detenu before this Hon'ble Court and set him at liberty.

For Petitioner : Mr.V.Parthiban
For Respondents : Mr.M.Babu Muthu Meeran, Addl.P.P.

O R D E R

(Order of the Court was made by P.K.MISRA, J.)

Heard the counsels appearing for the parties.

2. The order of detention on the allegation that the detenu is a Goonda is in question. In the grounds of detention, reference has been made to 4 adverse cases and one ground case. The fourth adverse case referred to is Crime No.666 of 2006 of J9, Thuraipakkam Police Station, which is registered under Section 394 IPC. The ground case number is Crime No.672 of 2006 of J9 Thuraipakkam Police Station under Sections 341, 392, 427, 336, 332, 506(2) and 307 IPC. After reciting the substances of the allegation in such ground case, the detaining authority has observed as follows:-

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"4. I am aware that Thiru.Rajini is in remand in J9 Thuraipakkam P.S. Crime No.672/2006 and he has moved a bail petition before the Principal District and Sessins Judge, Chengalpattu, in Crl.M.P.No.7215/2006 and the same is pending. I am also aware that it is very likely that he may come out on bail for the above case since in similar cases bails are granted by the same Court or Higher Court. If he comes out on bail, he will indulge in further activities, which will be prejudicial to the maintenance of public order. Further the recourse to normal criminal law would not have the desired effect of effectively preventing him from indulging in such activities which are prejudicial to the maintenance of public order. On the materials placed before me, I am fully satisfied that the said Thiru.Rajini is a Goonda and that there is a compelling necessity to detain him in order to prevent him from indulging in such future activities in future which are prejudicial to the maintenance of public order under the provisions of the Tamil Nadu Act 14 of 1982."

3. In the above background, the learned counsel for the petitioner submitted that there is no satisfaction recorded regarding the possibility of the detenu coming out on bail, in the adverse case Crime No.666 of 2006 even though the detenu was also under custody in connection with the said case and bail had not been granted by the date of passing of the order of detention. In fact, the copy of the order at page 297 indicates that the detenu was remanded till 07.07.2006 in connection with such adverse case Crime No.666 of 2006. The order of detention was passed on 03.07.2006. The material objects did not indicate the awareness of the detaining authority regarding the fact that the detenu was also in custody in connection with another case which are pending trial.

4. In the above background, the learned counsel for the petitioner has placed reliance upon the unreported decision of this Court in H.C.P.No.1296 of 2005 disposed on 27.03.2006. In the said case, there was no awareness indicated by the detaining authority regarding the fact that the detenu was also in custody in connection with another adverse case and reference was only made to the possibility of being released on bail in connection with ground case.

5. The contention raised by the counsel for the State is that the nature of offence in the adverse case was less serious than the nature of offence in the ground case. Repelling such contention, in the above Habeas Corpus petition it is observed as follows:-

"7. In the light of the details referred to above, let us consider the awareness shown by the detaining authority. In the grounds of detention, the detaining authority, after referring to the first adverse case in

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Crime No.257/2005 on the file of T1 Ambattur Police Station dated 7.2.2005, has referred to the second adverse case in Crime No.2653/2005 on the file of T1 Ambattur Police Station dated 12.08.2005, which relates to an offence under Sections 147, 148, 392, 448, 506 (ii) IPC. After referring to the same, the detaining authority has narrated the ground case dated 13.8.2005 in Crime No.2666/2005 on the file of T1 Ambattur Police Station for the offence under Sections 147, 148, 341, 448, 427, 307 and 506(ii) IPC. After narration of those details, while considering the imminent possibility of the detenus coming out on bail, in paragraph 4 of the detention orders, the detaining authority has specifically stated that, "he was aware that the detenus viz., Arumugam and Left Sekar @ Lottai Sekar were in remand in T1 Ambattur Police Station Crime No.2666/2005 and they have not moved any bail petition so far". After finding that there was imminent possibility that they may come out on bail in the above cases by filing bail applications, since in similar cases, bail was usually granted by the Court, the detaining authority passed the orders of detention. Though the learned counsel has pointed out that inasmuch as the detaining authority has shown his awareness in respect of the ground case, which is graver in nature, in view of the fact that the detenus were remanded by an order of learned District Munsif-cum-Judicial Magistrate, Ambattur, not only in respect of the ground case in Crime No.2666/2005, but also in respect of the second adverse case in Crime No.2653/2005 and in the light of the other information as stated earlier viz., even the sponsoring authority has made a specific request for police custody in respect of both the crime numbers and orders were passed by the learned District Munsif-cum-Judicial Magistrate in respect of both the crime numbers, and further taking note of the fact that the Special Report of the sponsoring authority also refers to both the crime numbers, we are of the view, as rightly pointed out by the learned counsel for the petitioners, that the detaining authority ought to have considered the relevant fact viz., the detenus were also in remand in respect of Crime Nos.2653/2005. Even in the earlier portion of the grounds of detention, the detaining authority has merely narrated the occurrence that took place on 12.08.2005 which relates to the second adverse case, but there is absolutely no reference to the order of the learned District Munsif-cum-Judicial Magistrate remanding them even in respect of the said Crime No.2653/2005.

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8. Though the learned Government Advocate relied on certain decisions of this Court with reference to the said aspect, in the light of the factual position as narrated above, we are of the view that the non-consideration of the relevant factor that the accused/detenus had been remanded in connection with Crime Nos.2653/2005, which is the second adverse case, wherein the commission of serious offence had been alleged, has the effect of vitiating the conclusion arrived at by the detaining authority regarding the compelling necessity to pass the orders of detention. We, therefore, accept the said contention raised by the learned counsel for the petitioners and both the orders of detention are liable to be quashed and are accordingly quashed".

6. In our considered opinion the ratio of the decision above referred to will be squarely applicable to this case. First of all, it has to be noticed that the offence under section 394 is punishable with life imprisonment or imprisonment upto 10 years. Similarly the offence under Section 307 is punishable with life imprisonment or imprisonment of 10 years. It is no doubt true that the offence under section 394 can be tried by a Magistrate whereas the offence under Section 307 is triable by a Court of session. That does not mean that allegation under section 394 is not serious and cannot be simply wished away by saying that the case is less serious in nature as compared to an offence under Section 307. Moreover, the detention order is passed on the basis of the subjective satisfaction of the detaining authority. If the detaining authority would have been made aware of the fact that the detenu was in custody in connection with another serious offence, it is not for us to guess as to whether the detaining authority would have come to the very same conclusion regarding the possibility of being enlarged on bail since such aspect depends upon the subjective satisfaction of the detaining authority.

7. In such view of the matter, we are constrained to quash the order of detention notwithstanding the seriousness of allegations in the adverse case as well as in the ground case. Habeas Corpus Petition is accordingly allowed.

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Sd/-
Assistant Registrar

/true copy/

Sub Assistant Registrar.

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To

1. The Secretary to Government,
   Prohibition & Excise Department,
   Government of Tamil Nadu,
   Fort St. George, Chennai-600 009.

2. The Commissioner of Police,
   Greater Chennai, Chennai.

3. The Superintendent,
   Central Prison, Chennai

4. The Joint secretary to Govt (Public Law and Order),
Fort.St George, Chennai-9.

5. The Public Prosecutor, High Court, Madras.
+ Onne cc to Mr. V. Parthiban Advocate SR 4362.
BVR (co)
sg 6/2/07

H.C.P.No.1095 of 2006

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